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474; *Mallette v. Scheerer* (1916) 164 Wis. 160 N. W. 182. See Professor Barbour, *The Extra-Territorial Effect of the Equitable Decree* (1919) 17 MICH. L. REV. 527.

EQUITY—JURISDICTION—POWER TO CREATE A PRIMARY RIGHT—SEPARATION AGREEMENT.—A separation agreement provided for a fixed payment of \$700 a month to the wife, and that in case of "any material change in the circumstances of either of the parties hereto either party hereto shall have the right to apply to any court of competent jurisdiction for a modification" of the sum to be paid. Later the wife became wealthy by reason of her stocks in companies making war profits, and the husband's business as a New York real estate lawyer was largely destroyed by war conditions. The husband brought a bill in equity for specific enforcement of the contract, asking that the sum to be paid should be greatly reduced. *Held*, that the plaintiff was not entitled to the relief asked. *Stoddard v. Stoddard* (1919, N. Y.) 124 N. E. 91.

It was the court's opinion that it had no jurisdiction to reduce the sum to be paid and thus modify the contract; this not being a matrimonial action to determine alimony. It is clear that jurisdiction cannot be conferred upon a court by mere consent or waiver or agreement of the parties. *Eaton v. Eaton* (1919, Mass.) 124 N. E. 37. It is no doubt true, also, that in general a court has no jurisdiction to create a *primary* right. The operative facts sufficient to create the legal relation must exist before action. In the present case the court believed that the contract created a primary right in the wife to \$700 a month, no more and no less, and that the clause providing for modification was an attempt to confer upon a court jurisdiction to create a different primary right. On this theory the legally operative fact creating a privilege in the husband to pay less than \$700 would be not the new circumstances of the parties, but the decree of the court itself. It would seem not unreasonable, however, to construe the contract to mean that the new circumstances shall operate to reduce the wife's right to a "reasonable sum." If so construed, the contract should be enforceable, just as contracts to pay a reasonable price are enforced, the amount being left to the jury. See *Joy v. St. Louis* (1891) 138 U. S. 1, 11 Sup. Ct. 243. This construction, however, seems to deprive the plaintiff of any right to relief in equity; for he needs only to refuse to pay more than the reasonable sum and has a good defence when sued for more. Of course, there is uncertainty as to how much he should tender, and it would be of advantage if he could get a declaratory judgment establishing the exact extent of his duty and of the wife's right. See Borchard, *The Declaratory Judgment* (1918) 28 YALE LAW JOURNAL, 1, 105. In *Kelso v. Kelly* (1860, N. Y. C. P.) 1 Daly, 419, the parties had agreed on the renewal of a lease with an arbitration to fix the rental, but the defendant refused to appoint an arbitrator. The court decreed specific performance and itself fixed the amount of the rental. This decree seems to create a primary right; for, by the contract, the finding of an arbitrator was a condition precedent to an enforceable duty to pay rent. It is possible, however, to distinguish the case on the ground that the defendant had committed a breach of an existing primary duty to appoint an arbitrator, and that the jurisdiction of the court to compel payment of a reasonable sum fixed by the court was created by this breach and not by agreement. Like *Kelso v. Kelly* are *Gregory v. Mighell* (1811, Eng. Ch.) 18 Ves. 328; *Johnson v. Conger* (1861, N. Y. Gen. T.) 14 Abb. Pr. 195.

LABOR UNIONS—INJUNCTIONS AGAINST BOYCOTTS.—The plaintiff refused to accede to a request by the defendant union that he employ only union men in his drayage business. Whereupon, the union ordered its members to have